

INDIANA BOARD OF TAX REVIEW
Small Claims
Final Determination
Findings and Conclusions

Petitions: 45-004-12-1-5-00033
45-004-13-1-5-00791-16
45-004-14-1-5-00790-16
45-004-15-1-5-01000-16
Petitioner: Elkhart Rentals, LLC/Chris Schaap¹
Respondent: Lake County Assessor
Parcel: 45-07-01-280-016.000-004
Assessment Years: 2012-2015

The Indiana Board of Tax Review (“Board”) issues this determination, finding and concluding as follows:

Procedural History

1. Petitioner initiated the 2012 appeal with the Lake County Property Tax Assessment Board of Appeals (“PTABOA”) on February 12, 2013. The PTABOA issued notice of its final determination for 2012 on September 12, 2014. Petitioner then timely filed its Form 131 petition with the Board
2. Petitioner initiated the 2013 appeal on May 22, 2014, the 2014 appeal on April 25, 2015, and the 2015 appeal on October 22, 2015. For all three years, the PTABOA failed to hold hearings within 180 days as required by Ind. Code § 6-1.1-15-1(k). Accordingly, Petitioner filed Form 131 petitions directly with the Board pursuant to Ind. Code § 6-1.1-15-1(o).
3. Petitioner elected to have the appeals heard under the Board’s small claims procedures. Respondent did not elect to have the appeals removed from those procedures.
4. Ellen Yuhan, the Board’s Administrative Law Judge (“ALJ”), held a hearing on October 3, 2016. Neither the ALJ nor the Board inspected the property.
5. Chris Schaap, member of Elkhart Rentals, LLC, was sworn as a witness for Petitioner. Robert Metz, Lake County Hearing Officer, and Edward Gholson, Calumet Township Chief Deputy Assessor, were sworn as witnesses for Respondent.

¹ The 2012 appeal was filed by Elkhart Rentals, LLC. The 2013-2015 appeals were filed by Chris Schaap.

Facts

- 6. The subject property is a single-family dwelling located at 432 Matthews Street in Gary.
- 7. Respondent determined the following assessments for the parcel under appeal:

Year	Land	Improvements	Total
2012	\$6,300	\$38,100	\$44,400
2013	\$6,300	\$28,900	\$35,200
2014	\$6,300	\$29,900	\$36,200
2015	\$6,3 00	\$30,200	\$36,500

- 8. Petitioner requested the following assessed values:

Year	Total
2012	\$12,210
2013	\$10,379
2014	\$8,407
2015	\$6,809

Record

- 9. The official record contains the following:
 - a. A digital recording of the hearing
 - b. Exhibits:

Petitioner Exhibit 1:	Appraisal by Roy Gouwens
Petitioner Exhibit 2:	2012 property record card (“PRC”)
Petitioner Exhibit 3:	2013 PRC
Petitioner Exhibit 4:	2014 PRC
Petitioner Exhibit 5:	2015 PRC
Petitioner Exhibit 6:	Annual Adjustment of Assessed Values Fact Sheet

Respondent Exhibit 1:	PRC for the subject property
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Respondent Exhibit 2:	Sales disclosure form and PRC for 210 S. Clark
Respondent Exhibit 3:	Sales disclosure form and PRC for 437 Mount St.
Respondent Exhibit 4:	CTT Active Vendor Property Listing
Respondent Exhibit 5:	Rental information from the Zillow website
Respondent Exhibit 6:	Residential rental questionnaires
Respondent Exhibit 7:	List of Petitioner's appraised properties
Respondent Exhibit 8:	Letter to Chris Schaap requesting rental information
Board Exhibit A:	Form 131 petitions
Board Exhibit B:	Notice of Hearing
Board Exhibit C:	Hearing sign-in sheet

c. These Findings and Conclusions.

Burden

10. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proving that a property's assessment is wrong and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 465, 468 (Ind. Tax Ct. 2003); *see also Clark v. State Bd. of Tax Comm'rs*, 594 N.E.2d 1230 (Ind. Tax Ct. 1998). A burden-shifting statute creates two exceptions to that rule.
11. First, Ind. Code § 6-1.1-15-17.2 "applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal is an increase of more than five percent (5%) over the assessment for the same property for the prior tax year." Ind. Code § 6-1.1-15-17.2(a). "Under this section, the county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeals taken to the Indiana board of tax review or to the Indiana tax court." Ind. Code 6-1.1-15-17.2(b).
12. Second, Ind. Code 6-1.1-15-17.2(d) "applies to real property for which the gross assessed value of the real property was reduced by the assessing official or reviewing authority in an appeal conducted under Ind. Code § 6-1.1-15," except where the property was valued using the income capitalization approach in the appeal. Under subsection (d), "if the gross assessed value of real property for an assessment date that follows the latest assessment date that was the subject of an appeal described in this subsection is increased above the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase, the county assessor or township assessor (if any) making the assessment has the burden of proving that the assessment is correct." Ind. Code § 6-1.1-15-17.2(d).
13. These provisions may not apply if there was a change in improvements, zoning, or use. Ind. Code § 6-1.1-15-17.2(c).

14. The assessed value decreased from \$44,800 in 2011 to \$44,400 in 2012. Petitioner, therefore, has the burden of proof for 2012. Assigning the burden for the other years at issue will depend on the final determinations for each respective preceding year.

Summary of Parties' Contentions

15. Petitioner's case:
- a. Petitioner contends the property is over-assessed. Petitioner submitted an appraisal prepared by Roy Gouwens, a certified residential appraiser. Mr. Gouwens prepared the appraisal in conformance with the Uniform Standards of Professional Appraisal Practice ("USPAP"). Mr. Gouwens estimated a value of \$11,000 as of March 1, 2011. *Schaap testimony; Pet'r Ex. 1.*
 - b. In an attempt to trend the 2011 appraised value to the 2012 valuation date, Petitioner applied the market adjustment value of 1.11 shown on the 2012 PRC. Applying the 1.11 value to the \$11,000 appraisal estimate results in a proposed assessed value of \$12,210 for 2012. *Schaap testimony; Pet'r. Ex. 2.*
 - c. For 2013, the market adjustment value was .85. Applying the .85 value to the 2012 value of \$12,210 results in a proposed assessed value of \$10,379 for 2013. *Schaap testimony; Pet'r Ex. 3.*
 - d. For 2014, the market adjustment value was .81. Applying the .81 value to the 2013 value of \$10,379 results in a proposed assessed value of \$8,407 for 2014. *Schaap testimony; Pet'r Ex. 4.*
 - e. For 2015, the market adjustment value was .81. Applying the .81 value to the 2014 value of \$8,407 results in a proposed assessed value of \$6,809. *Schaap testimony; Pet'r Ex. 5.*
 - f. With regard to Respondent's purported gross rent multiplier ("GRM") analysis, Petitioner contends Respondent has not provided any credible evidence to support the GRM of 4 for the subject property. *Schaap testimony; Resp't Ex. 1.*
 - g. With regard to the purported transfer of ownership to Robert Maddox, Petitioner contends Respondent's PRC is incorrect. Petitioner claims to not know who Mr. Maddox is and that there was no transfer of ownership to him. Petitioner does not remember when he acquired the property, but claims to be the property's owner and that he receives the tax bills related thereto. *Schaap testimony.*
16. Respondent's case:
- a. Respondent claims to have identified two sales in the subject neighborhood. A property at 210 Clark Road sold in July of 2008 for \$74,000 with a discount of

- \$14,800, which results in a value in the \$55,000-\$60,000 range. The other property, located at 437 Mount Street, sold in 2013 for \$48,000. Respondent contends the value of the subject property is correct because it falls between the values of those two sales. *Metz testimony; Resp't Exs. 2 and 3.*
- b. Respondent points out that the appraiser used two sales from a different neighborhood. Further, Respondent notes that the appraiser did not develop a cost approach or an income approach to value with regard to the subject property. *Metz testimony; Pet'r Ex. 1.*
 - c. Respondent contends that various administrative memoranda direct assessors to generate GRM analyses and establish values for certain rental properties based on those analyses. Respondent contends that the Calumet Township Assessor has researched the market and collected rental information from various sources, such as the Calumet Township Trustee's vendor list, the Zillow website, and residential rental questionnaires. Respondent contends that the value of the property is correct in using an average rent of \$750 and applying a GRM of 4. *Gholson testimony; Resp't Exs. 4-6.*
 - d. Respondent contends that Petitioner presented appraisals for other properties previously and, in many cases, the Calumet Township Assessor has agreed that the values were consistent with the values indicated using a GRM. The appraised value of this property, however, is not consistent with the value indicated by the GRM. Further, Respondent contends that Petitioner disagreed with his own appraised values. *Gholson testimony; Resp't Ex. 7.*
 - e. Respondent finally contends that Petitioner has refused to provide any rental information for the property and that the PRC shows there was a transfer of ownership to Robert Maddox on June 11, 2013. *Gholson testimony; Metz testimony; Resp't. Ex. 1.*

ANALYSIS

- 17. Before reaching the merits of the case, the Board must determine if Petitioner had standing to bring the appeals. Respondent contends that the PRC shows a transfer of ownership on June 11, 2013, to Robert Maddox. Petitioner contends the PRC is incorrect. Petitioner contends there was no transfer to Mr. Maddox and Petitioner is receiving the tax bills for the subject property.
- 18. Under the Board's regulations, "Party" includes (1) the owner of the property; or (2) the taxpayer responsible for paying the property taxes payable on the subject property. 52 IAC 2-2-13.
- 19. Petitioner included the property on his list of appeals dated February 12, 2013. Furthermore, despite the note on the PRC regarding the transfer, Respondent's PRC is for

2015 and shows the owner as Elkhart Rentals, LLC. Thus, it seems according to the PRC, Petitioner was the listed owner of the property according to Respondent's own records before and after the alleged transfer date. The Board, therefore, accepts Petitioner's testimony, as well as the information indicating ownership listed on the PRC, and determines Petitioner has standing to appeal the assessed values for the years at issue.

20. The Board finds that the assessed values should be reduced for each year at issue and it reached that decision for the following reasons:
- a. Real property is assessed based on its "true tax value", which means "the market value-in-use of a property for its current use, as reflected by the utility received by the owner or by a similar user, from the property." 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2); *see also* Ind. Code § 6-1.1-31-6(c). The cost approach, the sales comparison approach, and the income approach are three generally accepted techniques used to calculate market value-in-use. MANUAL at 2. Assessing officials primarily use the cost approach. MANUAL at 3. The cost approach estimates the value of the land as if vacant and then adds the depreciated cost new of the improvements to arrive at a total estimate of value. MANUAL at 2. Any evidence relevant to the true tax value of the property as of the assessment date may be presented to rebut the presumption of correctness of the assessment, including an appraisal prepared in accordance with generally recognized appraisal standards. MANUAL at 3.
 - b. Regardless of the method used to prove a property's true tax value, a party must explain how its evidence relates to the subject property's market value-in-use as of the relevant valuation date. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). The valuation date for each assessment at issue in these appeals was March 1 of the assessment year. Ind. Code § 6-1.1-4-4.5(f).
 - c. The Board will first address Respondent's GRM analysis. By statute, the GRM method is preferred for this type of rental property. Specifically, Ind. Code § 6-1.1-4-39 provides in part that the GRM method "is the preferred method of valuing...real property that has at least one (1) and not more than four (4) rental units..."
 - d. Respondent contends that the Calumet Township Assessor's Office collected information in order to establish GRMs to value rental properties. Respondent presented a spreadsheet of the Calumet Township Trustee's active vendor property listings. The spreadsheet is a 2015 list of rental properties accompanied by monthly rents. Respondent did not explain the relevance to the other assessment dates at issue, nor did Respondent explain how the list establishes an appropriate GRM. Respondent also presented rental information from the Zillow website. There is no date on this spreadsheet to indicate to what years the rent information pertains. Furthermore, a party introducing information from such a site must also show that the underlying data used by the website are reliable. In Respondent Exhibit 6, the

residential rental questionnaires are all dated 2015. Again, Respondent failed to explain the relevance with regard to the other assessment dates. Finally, Respondent failed to present any calculations showing how the GRM value of 4 was ultimately determined. Statements that are unsupported by probative evidence are conclusory and of little value to the Board in making its determination. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1118 (Ind. Tax Ct. 1998); and *Herb v. State Bd. of Tax Comm'rs*, 656 N.E.2d 890,893 (Ind. Tax Ct. 1995). Consequently, the Board finds that Respondent's GRM analysis is not probative of the subject property's true tax value. The Board next turns to the parties' specific proposals for the years at issue.

2012 Assessment

- e. As stated above, Petitioner had the burden of proof for 2012. Petitioner offered a USPAP compliant appraisal in which a certified residential appraiser valued the subject property at \$11,000 as of March 1, 2011. The Board has regularly found that appraisals performed within a year of the relevant valuation date are temporally sufficient to make a prima facie showing of a property's true tax value.
- f. Petitioner contends that the appraised value should be trended to the March 1, 2012, valuation date. Petitioner attempted to trend the appraised value to the 2012 valuation date by applying the market adjustment of 1.11 shown on the 2012 PRC.
- g. While the market adjustment value appearing on the PRC is applied to the cost of the improvements determined under the Guidelines, it appears that factor in this case is not reflective of the overall annual trending factor for 2012 because the total assessed value decreased from 2011 to 2012. Furthermore, Petitioner provided no explanation about how or why the market adjustment value appearing on the PRC should be determinative of the overall assessed value.
- h. Consequently, the Board rejects Petitioner's attempt to trend the appraised value using the market adjustment value. However, because Petitioner requested a value higher than the appraised value, the Board will not reduce the assessment below what Petitioner requested. The Board, therefore, finds Petitioner made a prima facie case that the 2012 assessed value should be changed to \$12,210.
- i. Once the Petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the Petitioner's evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). To rebut or impeach the Petitioner's case, the Respondent has the same burden to present probative evidence that the Petitioner faced to raise its prima facie case. *Fidelity Fed. Sav. & Loan v. Jennings Co. Ass'r*, 836 N.E.2d 1075, 1082 (Ind. Tax Ct. 2005).

- j. Respondent presented two sales disclosure forms. One property sold in 2008 and the other in 2013. Respondent failed to relate the sale prices to the relevant assessment dates as required.
- k. Respondent contends that because the subject's value falls within the two sale prices, the assessed value is correct. However, the subject's assessed value in fact does not fall between the two sale prices. The assessed value for all years at issue is below both of the sale prices. Further, to the extent Respondent is trying to use a sales comparison approach to establish the market value-in-use of the property, Respondent has failed. In order to effectively use the sales comparison approach as evidence in a property assessment appeal, the proponent must establish the comparability of the properties being examined. Conclusory statements that a property is "similar" or "comparable" to another property do not constitute probative evidence of the comparability of the two properties. *Long*, 821 N.E.2d at 470. Instead, the proponent must identify the characteristics of the subject property and explain how those characteristics compare to the characteristics of the purportedly comparable properties. *Id.* at 471. Similarly, the proponent must explain how any differences between the properties affect their relative market values-in-use. *Id.*
- l. Here, Respondent presented no evidence to show that the properties offered were comparable to the subject property. Because Respondent made no attempt to identify or value the differences among the properties, Respondent's sales have little probative value. The Board, therefore, finds that the 2012 assessed value should be reduced to \$12,210.

2013-2015 Assessments

- m. As will be discussed below, the Board ultimately finds that the assessed values for years 2013-2015 will also be changed to \$12,210. Because the original assessed value for each of those years represents an increase from each respective previous year's value of \$12,210, Respondent has the burden of proving that the assessed values for 2013-2015 are correct.
- n. Respondent did not offer any evidence to prove that the original assessed values were correct. As discussed previously, statements that are unsupported by probative evidence are conclusory and of little value to the Board in making its determination.
- o. As was the case for 2012, Petitioner contends that the values for 2013-2015 should each be trended forward using the market adjustment value found on each respective PRC. For the same reasons that were discussed with regard to Petitioner's 2012 proposed value, the Board finds that Petitioner similarly did not provide credible evidence to support its proposed values for 2013-2015.
- p. If an assessor fails to meet its burden and neither party offers probative evidence to show the property's actual true tax value, the assessment reverts to the previous

year's level. Ind. Code § 6-1.1-15-17.2(b). Accordingly, the Board finds that the 2013, 2014, and 2015 assessed values should also each be changed to \$12,210.

CONCLUSION

21. While the GRM method is the preferred method for this type of rental property, the Board finds that Respondent's GRM analysis is not probative of the subject property's true tax value. With regard to the values for the years at issue, Petitioner had the burden of proof for 2012 and provided a USPAP compliant appraisal valuing the property at \$11,000. Petitioner, however, requested a value of \$12,210. Respondent failed to rebut or impeach Petitioner's evidence. Respondent ultimately had the burden of proof for 2013-2015 and failed to provide probative evidence that the assessments were correct for those years. Petitioner proposed values for 2013-2015 and similarly failed to provide credible evidence. As a result, the assessed values for 2013-2015 each revert to the respective previous year's value.

FINAL DETERMINATION

In accordance with the above findings of fact and conclusions of law, the Board determines the 2012, 2013, 2014, and 2015 assessed values must each be changed to \$12,210.

ISSUED: December 30, 2016

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.